

§ 5.28

(e) When advising debtors of an intent to refer a debt to the IRS for offset, the bureau shall also advise the debtors of all remedial actions available to defer or prevent the offset from taking place.

§ 5.28 Referral of debts for offset.

(a) A bureau shall refer to the Service for collection by tax refund offset, from refunds otherwise payable in calendar year 1987, only such past-due legally enforceable debts owed to the Department:

(1) That are eligible for offset under the terms of 31 U.S.C. 3720A, section 6402(d) of the Internal Revenue Code, 26 CFR 301.6402-6T, and the MOU; and

(2) That information will be provided for each such debt as is required by the terms of the MOU.

(b) Such referrals shall be made by submitting to the Service a magnetic tape pursuant to § 5.27(c), together with an accompanying written certification to the Service by the bureau that the conditions or requirements specified in 26 CFR 301.6402-6T and the MOU have been satisfied with respect to each debt included in the referral on such tape. The bureau's certification shall be in the form specified in the MOU.

§ 5.29 Notice requirements before offset.

(a) The bureau must notify, or make a reasonable attempt to notify, the individual that:

(1) The debt is past due, and

(2) Unless repaid within 60 days thereafter, the debt will be referred to the Service for offset against any refund of overpayment of tax;

(b) The bureau shall provide a toll free telephone number for use in obtaining information from the bureau concerning the offset.

(c) The bureau shall give the individual debtor at least sixty (60) days from the date of the notification to present evidence to the bureau that all or part of the debt is not past-due or legally enforceable. The bureau shall consider the evidence presented by the individual and shall make a determination whether an amount of such debt is past-due and legally enforceable. For purposes of this subsection, evidence that collection of the debt is affected

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by a bankruptcy proceeding involving the individual shall bar referral of the debt to the Service.

(d) Notification given to a debtor pursuant to paragraphs (a), (b) and (c) of this section shall advise the debtor of how he or she may present evidence to the bureau that all or part of the debt is not past-due or legally enforceable. Such evidence may not be referred to, or considered by, individuals who are not officials, employees, or agents of the United States in making the determination required under paragraph (c) of this section. Unless such evidence is directly considered by an official or employee of the bureau, and the determination required under paragraph (c) of this section has been made by an official or employee of the bureau, any unresolved dispute with the debtor as to whether all or part of the debt is past-due or legally enforceable must be referred to the bureau for ultimate administrative disposition, and the bureau must directly notify the debtor of its determination.

Subpart D—Administrative Offset

AUTHORITY: 31 U.S.C. 3701; 31 U.S.C. 3711; 31 U.S.C. 3716.

SOURCE: 52 FR 52, Jan. 2, 1987, unless otherwise noted.

§ 5.30 Scope of regulations.

These regulations apply to the collection of debts owed to the United States arising from transactions with the Department, or where a request for an offset is received by the Department from another agency. These regulations are consistent with the Federal Claims Collection Standards on administrative offset issued jointly by the Department of Justice and the General Accounting Office as set forth in 4 CFR 102.3.

[52 FR 52, Jan. 2, 1987, as amended at 53 FR 16703, May 11, 1988]

§ 5.31 Designation.

The heads of bureaus and offices and their delegates are designated as designees of the Secretary of the Treasury authorized to perform all the duties for which the Secretary is responsible under the foregoing statutes: *Provided, however,* That no compromise of a

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claim shall be effected or collection action terminated except upon recommendation of the General Counsel or the appropriate bureau counsel or the designee of either. Notwithstanding the foregoing proviso, no such recommendation shall be required with respect to the termination of collection activity on any claim in which the unpaid amount of the debt is \$300 or less.

§ 5.32 Definitions.

(a) *Administrative offset*, as defined in 31 U.S.C. 3701(a)(1), means “withholding money payable by the United States Government to, or held by the Government for, a person to satisfy a debt the person owes the Government.

(b) *Person* includes a natural person or persons, profit or non-profit corporation, partnership, association, trust, estate, consortium, or other entity which is capable of owing a debt to the United States Government except that agencies of the United States, or of any State or local government shall be excluded.

§ 5.33 General.

(a) The Secretary or his or her designee, after attempting to collect a debt from a person under section 3(a) of the Federal Claims Collection Act of 1966, as amended (31 U.S.C. 3711(a)), may collect the debt by administrative offset subject to the following:

(1) The debt is certain in amount; and

(2) It is in the best interests of the United States to collect the debt by administrative offset because of the decreased costs of collection and the acceleration in the payment of the debt;

(b) The Secretary, or his or her designee, may initiate administrative offset with regard to debts owed by a person to another agency of the United States Government, upon receipt of a request from the head of another agency or his or her designee, and a certification that the debt exists and that the person has been afforded the necessary due process rights.

(c) The Secretary, or his or her designee, may request another agency that holds funds payable to a Treasury debtor to offset the debt against the funds held and will provide certification that:

(1) The debt exists; and

(2) The person has been afforded the necessary due process rights.

(d) If the six-year period for bringing action on a debt provided in 28 U.S.C. 2415 has expired, then administrative offset may be used to collect the debt only if the costs of bringing such action are likely to be less than the amount of the debt.

(e) No collection by administrative offset shall be made on any debt that has been outstanding for more than 10 years unless facts material to the Government’s right to collect the debt were not known, and reasonably could not have been known, by the official or officials responsible for discovering and collecting such debt.

(f) These regulations do not apply to:

(1) A case in which administrative offset of the type of debt involved is explicitly provided for or prohibited by another statute; or

(2) Debts owed by other agencies of the United States or by any State or local government.

§ 5.34 Notification procedures.

Before collecting any debt through administrative offset, a notice of intent to offset shall be sent to the debtor by certified mail, return receipt requested, at the most current address that is available to the Department. The notice shall provide:

(a) A description of the nature and amount of the debt and the intention of the Department to collect the debt through administrative offset;

(b) An opportunity to inspect and copy the records of the Department with respect to the debt;

(c) An opportunity for review within the Department of the determination of the Department with respect to the debt; and

(d) An opportunity to enter into a written agreement for the repayment of the amount of the debt.

§ 5.35 Agency review.

(a) A debtor may dispute the existence of the debt, the amount of debt, or the terms of repayment. A request to review a disputed debt must be submitted to the Treasury official who provided notification within 30 calendar days of the receipt of the written notice described in § 5.34.